IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 363 of 1986

in
FIRST APPEAL NO. 141 OF 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

JAYESH MANHARLAL SHAH

Versus

PATEL BHIMABHAI VAJABHAI

Appearance:
MR PV NANAVATI for Appellants
MR MA BHATT for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/11/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated March 17, 1986 rendered by the learned Single Judge, in

First Appeal No. 141/86, by which award dated August 10, 1984 passed by the Special Motor Accident Claims Tribunal, Panchmahals District, Godhra, in Motor Accident Claims Petition No.133/82 awarding Rs. 11,700/- as compensation to the respondent, is upheld.

2. The accident in question took place on September 13, 1981. Patel Bhimabhai Vajabhai, who was original claimant and who expired during the pendency of claim petition, was coming to Godhra town from his village Vavadi. When he was near Gandhi Chowk, the appellant no.1 came from opposite side driving his scooter bearing registration No.GAA-648 in a rash and negligent manner and dashed the scooter with Bhimabhai. Because of the accident, Bhimabhai sustained injuries. He was removed to hospital for treatment. According to Bhimabhai, the accident had taken place because of negligence onthe part of appellant no.1 and because of the injuries he suffered great pain and mental agony as well as had to spend a considerable amount for medicines, special diets etc. He, therefore, instituted Motor Accident Claims Petition No. 133/82 before Special Motor Accident Claims Tribunal, Panchmahals District at Godhra against the appellant no.1, who was owner and driving the scooter as well as the appellant no.2 with whom the scooter was insured. In all, Patel Bhimabhai claimed compensation of Rs. 24,500/-.

3. During the pendency of the claim petition, original claimant i.e. Patel Bhimabhai Vajabhai expired and, therefore, the respondent claiming to be the widow of Bhimabhai, submitted an application at Exh.57 for bringing her on record of the case as legal heir and representative of deceased Bhimabhai. It was also prayed by the respondent to permit her to amend the main petition in terms of her averments which were made in the application Exh.57. The Tribunal by an order allowed the application and permitted the respondent to amend the original claim petition.

4. The appellants submitted their written statement contending, inter-alia, that the accident had taken place because of negligence on the part of deceased claimant Bhimabhai and therefore, the claim petition was liable to be dismissed. It was averred therein that the claim advanced in the claim petition was exorbitant and the respondent was not entitled to the amount claimed in the petition. What was stressed was that the respondent was not legally wedded wife of deceased Bhimabhai and, therefore, the petition should be dismissed.

5. Upon rival assertion of the parties, necessary issues for determination were raised by the Tribunal at Exh.14. It may be stated that original claimant Bhimabhai had filed affidavit at Mark 59/1 mentioning necessary facts which were narrated by him in his claim petition. He expired on October 28, 1983 which means that the affidavit Mark 59/1 was prepared two months prior to his death. Documents such as certified copy of First Information Report which was lodged with reference to the accident in question, certified copy of panchnama of place of occurrence at Exh.49, medical certificate indicating injuries sustained by original claimant Bhimabhai at Exh.47 etc. were also produced. The respondent had filed affidavit and on demand being made by the appellants, she was permitted to be cross-examined by the appellants. On appreciation of evidence, the Tribunal held that original claimant Bhimabhai had sustained injuries on account of rashness and negligence on the part of the appellant no.1 in driving his scooter. The Tribunal deduced that the respondent was legally wedded wife of deceased Bhimabhai and was entitled to maintain claim petition as well as entitled to receive compensation for the injuries sustained by Bhimabhai. On appreciation of evidence led by the respondent regarding income of injured victim Bhimabhai, the Tribunal held that the respondent was entitled to get compensation of Rs.11,700/- with proportionate costs and interest at the rate of 6% per annum till realisation, by judgment and award dated August 10, 1984. The award rendered by the Tribunal was challenged by the appellants before the High Court by way of filing First Appeal No. 141/86. The appeal was placed for admission hearing before the learned Single Judge and the learned Single Judge dismissed the appeal summarily by reasoned judgment dated February 13, 1986, giving rise to the present appeal.

6. Mr. P.V.Nanavati, learned Counsel for the appellants submitted that the accident had not occurred on account of negligence of appellant no.1 and, therefore, the impugned judgment deserves to be set aside. It was pleaded that injured Bhimabhai had not suffered overall disability of 5% and in view of insufficient and unreliable evidence regarding income, award of Rs.11,700/- with interest at the rate of 6% per annum should not have been passed by the Tribunal. What was asserted was that the respondent was not lawfully wedded wife of original claimant Bhimabhai and, therefore, the learned Single Judge was not justified in dismissing the appeal summarily. The learned Counsel for the appellants also stressed that after the death of the original claimant, cause of action did not survive and,

therefore, the learned Single Judge should have set aside the award of the Tribunal granting compensation to the respondent.

7. Mr. M.A.Bhatt, learned Counsel for the respondent submitted that cogent reasons have been given by the Tribunal as well as by the learned Single Judge indicating as to how the respondent is entitled to compensation and as just compensation is awarded to the respondent, the appeal should be dismissed by this Court.

8. We have heard the learned Counsel for the parties at length. We have also taken into consideration the record of the case. The contention that the accident did not occur on account of negligence of the appellant no.1 and, therefore, appeal should be accepted, is devoid of merits. The affidavit which was filed by the original claimant at Mark 59/1 read with the contents of F.I.R. Exh.48 and panchnama of place of occurrence Exh.49, makes it evident that the accident in question had taken place only because of rash and negligent driving of the scooter by appellant no.1. The panchnama of place of occurrence does not disclose that the original claimant was on wrong side of the road. The theory propounded by appellant no.1 that while crossing the road, original claimant had fallen down and had sustained injuries, is rightly disbelieved by the Tribunal as well as by the learned Single Judge in view of the reliable documentary evidence produced by the respondent. In our view, neither the Tribunal, nor the learned Single Judge has committed any error in concluding that original claimant Bhimabhai sustained injuries on account of rashness and negligence on the part of appellant no.1 in driving his scooter. The said finding being just, is hereby upheld.

9. The contention that with the death of original claimant, cause of action also died and, therefore, the award passed by the Tribunal as confirmed by the learned Single Judge should be set aside, has no substance. It is relevant to notice that cause of action had arisen on the date of accident when injuries were caused to original claimant as well as subsequent suffering by original claimant Bhimabhai on account of tortuous act of appellant no.1, who was driving his own scooter. Even if the claimant who was injured, has died, then also legal heir and representative of the deceased would be entitled to claim compensation. Section 155 of the Motor Vehicles Act, 1988, which corresponds with old Section 102 contains statutory provisions as to the effect of death on certain causes of action. This section has over-riding effect as it begins with non-obstente clause.

It provides that notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance had been issued, if it occurs after happening of an event which has given rise to a claim, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer. In view of statutory provisions made in section 155 of the Motor Vehicles Act, 1988, which wholly correspond with old Section 102 of the Motor Vehicles Act, 1988, we are of the opinion that the respondent was not only entitled to continue the claim petition which was filed by original claimant Bhimabhai, but was also entitled to compensation which could have been awarded to the original claimant. Therefore, the judgment impugned in the appeal cannot be interfered with on the ground that after the death of the original claimant, the respondent was neither entitled to continue the proceedings initiated by original claimant Bhimabhai, nor entitled to receive compensation.

10. It was urged that the respondent was not legally wedded wife of original claimant Bhimabhai and, therefore, the appeal should be allowed. In our view, there is no substance in this contention also and it is rightly negatived by the Tribunal as well as by the learned Single Judge. From the affidavit filed by the respondent and her cross-examination as well as affidavit of Mohanbhai Chhaganbhai filed at Exh.79, it is manifest that the respondent was initially married to one Salambhai Chhaganbhai, who had died 12 years prior to filing of the affidavit. The evidence further establishes that after the death of Salambhai Chhaganbhai, she had remarried with original claimant Bhimabhai and was staying with him as his wife. The case pleaded by the respondent that she was lawfully wedded wife of original claimant Bhimabhai gets corroboration from the affidavit filed by Mohanbhai Chhaganbhai at Exh.79. Witness Mohanbhai has averred on oath that deceased Bhimabhai was staying with the respondent as her husband and in fact, the respondent had given shelter to deceased Bhimabhai. Though the appellants were afforded opportunity to cross-examine the respondent, nothing could be brought on record to doubt her case that she was legally wedded wife of deceased Bhimabhai. The evidence on record clearly establishes that deceased Bhimabhai and the respondent were staying together as husband and wife since long and were known to and regarded as such by outside world. It is not the case of the appellants that second marriage of respondent with original claimant was prohibited. In a society where second marriage is not

prohibited under the statute or under customary law, it is always open for any person to marry a second wife if he so desires and there is no obstacle to the presumption being raised from long cohabitation. Having regard to the nature of evidence led by the respondent, we are of the opinion that the learned Single Judge was justified in holding that this was a case of raising presumption to the effect that deceased Bhimabhai and the respondent were living together as legally wedded couple. We may state that similar presumption is also raised by the Tribunal and we see no reason to take a different view of the matter. Thus, the impugned judgment is not liable to be set aside on the ground that the respondent is not legally wedded wife of deceased Bhimabhai and is not entitled to receive compensation.

11. Lastly, it was urged that computation of compensation is erroneous and,therefore, the appeal should be accepted. It is relevant to notice that though original claimant Bhimabhai had claimed a sum of Rs. 24,500/- as compensation,the Tribunal awarded a small sum of Rs.11,700/- with 6% interest thereon till realisation as compensation. The Tribunal has given cogent and convincing reasons indicating as to how the respondent is entitled to compensation of Rs.11,700/- for the injuries sustained by original claimant Bhimabhai. Those reasons are to be found in paragraphs 7 to 11 of the judgment rendered by the Tribunal and we are in complete agreement with those reasons. The determination of compensation cannot be said to be exorbitant or on higher side necessitating interference of the Court in the present appeal. The learned Single Judge was justified in observing that the amount involved in the appeal is very small and, therefore, the Insurance Company which is a nationalised institution, should have avoided pursuing such litigations involving petty amounts. Therefore, in our view no ground is made out by the appellants to interfere with either the judgment delivered by the learned Single Judge or the award made by the Tribunal and the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs. The learned Counsel for the appellants has stated at the bar that the amount due under the award is already deposited by the appellants in the Tribunal. The Tribunal shall pay the amount deposited by the appellants to the respondent by A/c. Payee Cheque after due and proper verification.

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